much less a criticism of any particular department. There are, however, two points that may be referred to; the first is the adoption of the Austinian notion of "positive" law as the subject matter of Jurisprudence, of which he says, "it is convenient to recognize as laws only such rules as can reckon on the support of a sovereign political authority, although there are states of society in which it is difficult to ascertain as a fact what rules answer to this description" (p. 52). The second point is a necessary consequence of this notion of law—viz: a refusal to recognize International Law as real law—"It is the vanishing point of Jurisprudence," says Professor Holland (p. 380). Both of these positions the author recognizes as being subject to great doubt since the days of Sir Henry Maine (p. 50); and the growing strength of International Law would seem to render the positions still more doubtful.

THE CONSTITUTIONAL HISTORY OF NEW YORK. BY C. Z. LINCOLN. Rochester: The Lawyers Co-operative Publishing Co. 1906. pp. Vol. I, xxx, 756; Vol. II, xvii, 725; Vol III, xviii, 757; Vol IV, xxvi, 800; Vol. V, 551.

Treatises that attempt to trace historically the evolution of the organic law of any State in the Union are seldom visible in the flood of books on American history which now come tumbling from the presses of this country. To the student of so neglected a realm of American institutions the title of Mr. Lincoln's five large volumes affords by anticipation a pleasure akin to that of the bibliophile who rejoices in a rare first edition. Whether the work is indeed what its title claims—a history, or whether it is merely a manual of reference compiled on a huge scale may be determined by an examination of its contents.

The introduction opens with a sketch of the leading political institutions of the colony of New York under both Dutch and English rule. This is followed by a brief account of the various constitutions of the state, and their amendments adopted prior to 1902. Several hundred pages are then devoted to a series of documents called "State Constitutions." These include Magna Charta, the Charter of Liberties and Privileges, the Declaration of Independence, the Articles of Confederation, the Constitution of the United States, and the four constitutions of the State of New York with the amendments appurtenant. A collection of annals relating to the colonial period from 1609 to 1691 and a description of the colonial legislature and judiciary usher in the story of how the first constitution of the commonwealth was framed and promulgated. After some consideration of the changes made in the organic law by the convention of 1801, the remainder of the first volume is given over to the work of the convention of 1821 and to the constitution which it prepared.

The second volume enumerates the amendments added to the constitution of 1821, and proceeds to relate the causes that led to the summons of the convention of 1846. Passing on to the constitutional development since that time, the author describes how certain political circumstances, due to complications rising out of the Civil War, prevented the adoption of a constitution proposed by the convention of 1867. He concludes the volume by an account of the course of amendment as di-

rected by the Constitutional Commission of 1872, by legislative recommendation, and by the Judiciary Commission of 1890.

Proof of the ample proportions which the fundamental law of the State has attained appears in the fact that the entire third volume deals with the constitution of 1894 alone, the circumstances under which it was framed and submitted, and the amendments with which it has since been provided. The fourth volume contains this constitution and its amendments copiously annotated. Tables of statutes construed on constitutional grounds from 1787 onward, tables of cases bearing on the constitutions, a general index, and a special index of persons, complete the treatise.

A careful analysis and interpretation of the several organic laws of New York afford certain deductions of a profoundly significant character to which Mr. Lincoln in his zeal for compilation gives scant attention. Among them may be cited the tendency apparent in the constitution of 1821 to abandon two prejudices of colonial origin, namely, mistrust of the governor and confidence in the legislature. The former was removed in large measure through the abolition of the notorious Council of Appointment. Experience had not yet demonstrated fully to the popular mind the necessity of transposing the application of the prejudices in question, although some evidence of appreciating the need is shown in the method of amendment. To atone for the defect in the first constitution of making no provision for amendment, save by way of convention, the constitution of 1821 granted to the legislature the power to suggest amendments to the people, but only on condition that the changes be subjected to the scrutiny of two successive legislatures before they were submitted to the electorate. The resolution, also, to put the constitution to the test of popular vote was a response to the insistent demands of a self-conscious democracy that would suffer no longer its representatives in convention to promulgate the fundamental law of the State without its direct approval expressed at the polls. In the constitution of 1846, however, the recognition of legislative shortcomings is fairly manifest. The process of enlarging the instrument by restrictions upon the legislators and by instructions regulating their conduct as a measure of self-protection had certainly achieved great progress. Provision also appears in this constitution for a broadening of the suffrage commensurate with the growth of the democratic spirit.

An explanation of the fullness with which the organic law of the State is now formulated, as exemplified by the constitution of 1894, may be sought, not in the desire to safeguard the people against their representatives in the legislature only, or even in the diversification of public interests attendant upon the expanding activities of the age. Rather may it be sought in the altered conception of the relation of the state to the individual, especially apparent since 1821. Instead of being regarded as merely a protector of the self-centered individual engaged in the blithe pursuit of liberty and happiness, the state has become a paternal institution, a guardian of the masses, an employer and a regulator of labor, an eleemosynary agency to aid the weak against the strong in the struggle for social betterment.

To the publicist and to the practicing lawyer the work of Mr. Lincoln

will be of great value. The searcher for certain materials of history will also have reason to welcome this convenient collection. They will not be disposed to carp at its failure to justify its pretentious title. The reviewer for a law journal may not with propriety dwell upon the extent to which the work is lacking in the essentials of historical composition. Happily the day is past when any person of legal training and a proclivity for the compilation of annals, statistics, forensic nomenclature, digests, documents, and explanatory notes can crowd them into a number of thick tomes and unchallenged call the product a constitutional *history*. We have a useful assortment of information about the constitutions of the colony and the State; but we still need a constitutional history of New York.

THE POWER TO REGULATE CORPORATIONS AND COMMERCE. BY FRANK HENDRICK. New York and London: G. P. Putnam's Sons, 1906. pp. lxxii, 516.

The author states that the object of his work is "to define the limits within which the governments of the several states and of the United States may secure freedom of trade by control of the persons and things engaged therein and to indicate the respective powers of the three departments of government in the exercise of such control." His main topic, however, as is indicated by his principal title, is the regulation and control of corporations. Such regulation and control, so far as can be gathered from his pages, he thinks should be exercised by the national government, through what he affirms to be its "common law" powers. But, when we come to examine his argument, we find that he often uses the phrase "common law" in a sense different from that in which it is generally understood. Indeed, in his preface, he observes that "the mooted question of the existence of a body of constitutional principles of such comprehensiveness as to be called the 'Common Law of the United States' is discussed exhaustively in this book for the first time, not only as a basis of remedy for the violation of rights guaranteed by the Constitution of the United States but also as a basis of jurisdiction for United States courts."

In this sentence, the author applies the phrase "common law" to a supposed "body of constitutional principles." In other places, he seems to ascribe to the national government the possession of common law powers in the fullest extent. Thus, on p. 216, he says:

"The courts of the United States may construe the Constitution only where the matter is capable of presenting a case in law or in equity, but those provisions of the Constitution which they may apply sum up the whole of the common law. And as the constitution of no State can change either the Constitution or the laws of the United States, and as the legislature of the State cannot change the common law of the State, the source of the common law being in the people and the law being wider than any State, there seems to be no legal basis for distinction between the common law of the State and the common law of the United States."

The passage just quoted, if the language is to be understood in any ense heretofore known, advances two novel propositions, namely, (1)